

APPEAL NO. 050351
FILED MARCH 29, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A benefit review conference (BRC) was held in August 2004 with regard to the amount of supplemental income benefits (SIBs) to be paid to appellant (claimant) for the sixth quarter of SIBs. A contested case hearing (CCH) on sixth quarter SIBs was not held. On September 15, 2004, (hearing officer 1) issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees in the amount of \$1,315.00 to be paid to (law firm) by the respondent (self-insured) pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The attorney's fee's order reflects that legal services were performed on behalf of the claimant by (attorney 1) and (attorney 2), both of whom are associated with the law firm. On December 17, 2004, a CCH was held in (City 1), Texas, with (hearing officer 2) presiding as the hearing officer. The issues at the CCH were whether the self-insured is liable for the payment of attorney's fees and whether the self-insured timely appealed the order for attorney's fees. Hearing officer 2 determined that jurisdiction and venue are proper; that attorney's fees in the amount of \$1,315.00 were not authorized pursuant to Section 408.147(c) and Rule 152.1(f); that the self-insured "did not waive its right to dispute that the attorney fees ordered by the Commission on September 15, 2004, pursuant to Section 408.147(c) and Rule 152.1(f) were [sic] authorized, by not filing a request for benefit contested hearing within 15 days of receiving the Attorney fee order"; and that the "Claimant's attorney is to collect its attorney fees of \$1315.00 from the Claimant's benefits and not from the carrier." Attorney 1 filed an appeal designating the claimant as the appellant, but noting in the conclusion section that the claimant "and his counsel" are challenging hearing officer 2's determinations, contending that the attorney's fees order in issue became final because the self-insured did not timely request a CCH under Rule 152.3(d) and that the self-insured did dispute paying the full amount of sixth quarter SIBs, which necessitated the claimant's attorney's involvement and resulted in the payment of the full amount of sixth quarter SIBs after the BRC. The self-insured responds that hearing officer 2's decision should be affirmed.

DECISION

Hearing officer 2's decision is reversed and a decision is rendered that the self-insured is to pay the attorney's fees approved in the attorney's fees order of September 15, 2004, because that order became final when the self-insured failed to timely request a CCH under Rule 152.3(d).

Rule 152.3(d) provides:

Except as provided in subsection (e) of this section, an attorney, claimant, or carrier who contests the fee fixed and approved by the Commission shall request a benefit contested case hearing. The request shall be

made by personal delivery or first class mail and be filed with the Commission field office handling the claim or the central office of the Commission no later than the 15th day after receipt of the Commission's order. A claimant may request a hearing by contacting the Commission in any manner no later than the 15th day after receipt of the Commission's order. The contesting party other than a claimant shall send a copy of the request by personal delivery or first class mail to the carrier and the other parties, including the claimant and attorney.

At the CCH, the parties stipulated that the self-insured's (City 2) representative received the attorney's fees order on September 15, 2004, and that the self-insured's request for a CCH was filed on October 6, 2004. The self-insured's attorney acknowledged at the CCH that the self-insured's dispute was not filed within 15 days, but contended that its obligation to pay attorney's fees was never triggered under Section 408.147(c), and thus the attorney's fees order was invalid and unenforceable, and that there is no waiver provision that applies to Section 408.147(c). We note that in the self-insured's response, which was timely filed as a response, but not timely filed as an appeal, the self-insured states that it timely contested the attorney's fees order without further explanation, and that even if it did not timely contest the attorney's fees order, it has not waived into paying the claimant's attorney's fees.

Hearing officer 2 found that the self-insured is deemed to have received the attorney's fees order on September 20, 2004 (using the 5-day deemed receipt rule for mailing in Rule 102.5(d)). The self-insured did not appeal that finding, but the claimant and the attorney did, contending that the self-insured received the attorney's fee order on September 15, 2004. Hearing officer 2's decision reflects that he did not apply an earlier deemed date of receipt because there was no date stamp indicating when the attorney's fees order was placed in the self-insured's (City 2) representative's box. Hearing officer 2 further found that the self-insured requested a CCH on October 6, 2004, to address whether it was liable to pay the attorney's fees. Neither party appeals that finding and it is supported by a Dispute Resolution Information System note in evidence. Hearing officer 2 noted in the Background Information section of the decision and order that the self-insured's request for a CCH was filed 16 days after its receipt of the attorney's fees order, but he stated that no waiver provision applies to the self-insured's right to contest liability for the claimant's attorney's fees.

Whether the self-insured received the attorney's fees order on September 15, 2004, as contended by the claimant and the attorney, or on September 20, 2004, as found by hearing officer 2 (which finding was not appealed by the self-insured), the self-insured's request for a CCH filed on October 6, 2004 (which finding was not appealed), was filed with the Commission later than the 15th day after the self-insured's receipt of the attorney's fees order. The 15th day after September 20, 2004, was Tuesday, October 5, 2004, thus the request for a CCH filed on October 6, 2004, was filed late. We note that Rule 102.3(b) provides that use of the term "day" rather than "working day" shall mean a calendar day; that Rule 152.3(d) states "no later than the 15th day after receipt of the Commission's order," and that the provisions of Rule 143.3(f) regarding

not including Saturdays and Sundays and holidays listed in Section 662.003 of the Government Code applies to the computation of time in which to file a request for appeal with the Appeals Panel, and not to a request for a CCH under Rule 152.3(d).

In Texas Worker's Compensation Commission Appeal No. 990533, decided April 16, 1999, a benefit review officer issued an attorney's fees order in which a carrier was ordered to pay claimant's attorney's fees pursuant to Section 408.147(c) and Rule 152.1(f); the carrier did not timely request a CCH under Rule 152.3(d) within 15 days of its receipt of the attorney's fees order; the hearing officer determined that the attorney's fees order was final and binding; and the carrier appealed, contending that Section 408.147(c) did not apply to the facts of the case and that the Commission could not apply Section 408.147(c) to the situation regardless of when its CCH request was filed. In Appeal No. 990533, *supra*, the Appeals Panel affirmed the hearing officer's decision that the attorney's fees order became final because the carrier had not timely requested a CCH under Rule 152.3(d). The Appeals Panel noted in that decision that the 1989 Act gives the Commission the responsibility for approving attorney's fees and that in implementing a system to carry out that responsibility, the Commission has set deadlines for filing a contest of an attorney's fee order. See *also* Texas Workers' Compensation Commission Appeal No. 971769, decided October 14, 1997.

We reverse hearing officer 2's decision that the claimant's attorney is to collect the \$1,315.00 in attorney's fees from the claimant, and not from the self-insured, and we render a decision that the attorney's fees order of September 15, 2004, became final because the self-insured did not timely request a CCH pursuant to Rule 152.3(d) to contest the fee approved by the Commission and, therefore, the self-insured is to pay the attorney's fees of \$1,315.00 to the claimant's attorney.

According to information provided by the carrier the true corporate name of the insurance carrier is **TEXAS POLITICAL SUBDIVISIONS JOINT SELF-INSURANCE FUNDS** and the name and address of its registered agent for service of process is

**TIM OFFENBERGER
12720 HILLCREST, SUITE 100
DALLAS, TEXAS 75230.**

Robert W. Potts
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Margaret L. Turner
Appeals Judge